

# IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

---

## COMPLETE TITLE OF CASE

SAM PRACH,

Respondent,

v.

DARMAN (PRACH) WESTBERG,

Appellant.

---

**DOCKET NUMBER WD77511**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** March 3, 2015

---

## APPEAL FROM

The Circuit Court of Boone County, Missouri  
The Honorable Leslie Schneider, Judge

---

## JUDGES

Division I: Martin, P.J., and Newton and Pfeiffer, JJ.

CONCURRING.

---

## ATTORNEYS

Malia T. Parnell  
Columbia, MO

Attorney for Respondent,

Melissa A. Faurot  
Columbia, MO

Attorney for Appellant.

---



## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

SAM PRACH, )  
 )  
 Respondent, )  
v. ) **OPINION FILED:**  
 ) **March 3, 2015**  
DARMAN (PRACH) WESTBERG, )  
 )  
 Appellant. )

**WD77511**

**Boone County**

**Before Division I Judges:** Cynthia L. Martin, Presiding Judge, and Thomas H. Newton and Mark D. Pfeiffer, Judges

Darman Westberg, a mother to two children, appeals the judgment of the Circuit Court of Boone County, Missouri, denying her motion to modify the judgment of dissolution between herself and Sam Prach, the children's father. Specifically, the mother sought to modify the parenting plan by changing the children's residence for mailing and educational purposes from the father's address to her address and by changing the parenting time schedule. On appeal, the mother claims that the circuit court erred: in using the wrong legal standard to determine whether changed circumstances had occurred; in determining that the best interests of the children did not warrant modification; in denying the mother's motion requesting the circuit court to conduct an in camera interview of the children; in releasing the guardian ad litem prior to the final evidentiary hearing on the motion to modify; and in awarding the father \$1,500 in attorney's fees.

**AFFIRMED.**

**Division I holds:**

Although, under section 452.410, a change in circumstances of a child or the child's custodian need not be either substantial or continuing in order to warrant further consideration by the court of a motion to modify, the circuit court's judgment indicating that it may have erroneously required the mother to make such a showing does not warrant reversal where the court also found that the best interests of the children did not warrant modification. In addition,

substantial evidence supports the circuit court's findings as to the children's best interests, and the court's ultimate determination that modification was not warranted was not an abuse of the court's discretion.

The circuit court did not err in refusing to allow the children to testify at the modification hearings or to interview the children in camera because the circuit court effectively found the children incompetent to testify or to be interviewed, either by operation of section 491.060, in the case of the younger child, or by the child's emotional state, in the case of the older child. Again, substantial evidence exists in the record to support the circuit court's findings, and the court's refusal to require the children to testify was not an abuse of the court's discretion.

The circuit court did not err in excusing the guardian ad litem prior to the final evidentiary hearing for the motion to modify because the guardian ad litem was appointed in the first instance solely for the purpose of helping the court determine whether the children should be made to testify or to be interviewed in camera. When the court released the guardian ad litem, the parents had both represented to the court that they had no other evidence to present other than the children's testimony. When the court agreed to hear additional evidence, it reappointed the guardian ad litem so that the children's interests were always protected.

It was not error for the circuit court to award the father \$1,500 in attorney's fees as the award was not a reconsideration of its original judgment, which did not award attorney's fees, and which the parties did not appeal. Instead, the award represented the fees the court apparently found that the father incurred in defending against the mother's frivolous post-trial motions.

**Opinion by: Mark D. Pfeiffer, Judge**

March 3, 2015

\* \* \* \* \*

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.